

STAFF REPORT

Meeting Date: May 15, 2002

TO: LAFCO Commissioners

FROM: Everett Millais, Executive Officer

STAFF: Hollee King Brunsky, Planner III

SUBJECT: Fee Reduction Request for LAFCO 02-08: Oxnard Drainage District No. 2 - Naumann

RECOMMENDATION:

Deny the fee reduction request for LAFCO Case No. 02-08: Oxnard Drainage District No. 2 – Naumann, and direct staff to collect total fees of \$4000.00 prior to recordation of proposed annexation.

DISCUSSION:

The applicant, Oxnard Drainage District No. 2, has requested a fee reduction (See Attachment 1) of the \$4000.00 LAFCO fee in accordance with the LAFCO fee schedule, effective since September 4, 2001. The applicant states that the processing fee of \$4000 exceeds the reasonable cost for LAFCO to process the proposed annexation and that the fee is a hardship on the owner.

Government Code (G.C.) Section 56383 of the Cortese-Knox-Hertzberg (C-K-H) Act of 2000 allows the Commission to establish a schedule for fees for the costs of processing applications such as annexations.

COMMISSIONERS AND STAFF

COUNTY Steve Bennett, Chair Kathy Long <i>Alternate:</i> Judy Mikels	CITY Linda Parks John Zaragoza <i>Alternate:</i> Evaristo Barajas	SPECIAL DISTRICT Jack Curtis John Rush <i>Alternate:</i> Dick Richardson	PUBLIC Louis Cunningham, Vice Chair <i>Alternate:</i> Kenneth M. Hess
EXECUTIVE OFFICER Everett Millais	PLANNER III Hollie Brunsky	CLERK Debbie Schubert	LEGAL COUNSEL Noel Klebaum

Reasonable Fee Costs

Government Code Section 56383(b) states:

"The schedule of fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged and shall be imposed pursuant to Section 66016 [hearing and resolution requirements]."
(underlining added)

On July 18, 2001 the Commission approved a new fee schedule effective on September 4, 2001. This fee schedule reflects average costs of processing LAFCO cases including administrative costs, professional staff review costs, and Commission costs, but does not recover all of the costs of LAFCO operations. Using the average costs of processing all types of actions is an acceptable method of establishing fees. It is not necessary for the fees to exactly match the costs of processing each application. Courts have found that flat fees are justifiable as long as the cumulative amount of the fees collected does not surpass the overall cost of the program or service. The current fee schedule recovers less than 20% of the total costs of LAFCO operations and was found to be reasonable and in compliance with the law at the time of adoption. Further, it has been uniformly applied since the adoption, even though some cases may have cost less to process and some cases may have cost more if actual direct costs had been charged.

Hardship

The applicant claims that the payment of fees would be a hardship to the property owner and therefore the fees should be waived or reduced. There is no section in the Government Code of the C-K-H Act that allows a waiver of fees based on hardship.

The only provision for waiver of fees is in Government Code Section 56383(d) which states:

"The commission may waive a fee if it finds that the payment would be detrimental to the public interest."

The applicant has not presented any supporting information that the payment of fees would be a hardship or detrimental to the public interest. The proposed annexation to the Oxnard Drainage District No. 2 will serve the property owner and contribute to the value of the property and the agricultural use of the site. Staff cannot, therefore, recommend a finding that a fee waiver in this instance is in the public interest. In fact, a waiver or reduction in fees in this case would be unfair to similar applicants that have paid the fees.

Summary

The proposed annexation for LAFCO Case No. 02-08 is similar to most all LAFCO proposals brought before your Commission. A single property owner wishes to obtain service from a special district, and in so doing, applies to LAFCO for annexation to the district and pays the processing fees associated with it. The proposal has taken approximately the same processing time and has had the same associated administrative costs of the consent item proposals before your Commission on May 15, 2002.

The applicant and representatives are aware that the Commission will be considering a revised fee schedule to be potentially effective July 1, 2002. The concern of the applicant seems to be that the current average cost, fixed fee system may have processing costs higher than the proposed combination fixed fee and time billing system proposed for July. Although representatives for the applicant were offered the opportunity to wait until any new fee system took effect, they requested that processing occur earlier than July 1, 2002 due to other time constraints. Correspondingly, and without substantial evidence in the record as to a reason that waiving or reducing the fees for this one case is in the public interest, the fees in effect at the time of application and action of the Commission should be paid in full.

Therefore, staff finds no sufficient reason or evidence that would allow for a fee reduction or waiver of the processing costs.

Attachment 1: March 31, 2002 Letter to LAFCO from Braitman & Associates
 requesting reduction in LAFCO fee.

**BRAITMAN
& ASSOCIATES**

March 31, 2002

Everett Millais, Executive Officer
Ventura LAFCO
800 South Victoria Avenue
Ventura, CA 93009

Naumann Annexation to ODD No. 2 – Reduction of LAFCO Fee

Dear Everett:

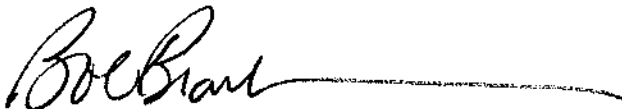
I have been retained by Oxnard Drainage District No. 2 to process the Naumann Annexation to the District.

I am writing to request that the processing fee for this boundary change be substantially reduced. The amount of the fee significantly exceeds the reasonable cost for the Commission to process the annexation. It therefore appears to violate the limitations in Government Code §56383(b).

This annexation consists of a single parcel in agricultural production in an agricultural preserve. It is contiguous on three sides with the District. No land use, planning or zoning changes will result. The District is the lead agency. The annexation is categorically exempt from CEQA. The only landowner consents to the annexation and the District agrees to waive conducting authority proceedings thereby avoiding the need to notice the hearing or notifying surrounding property owners. I cannot conceive of a more routine matter on LAFCO's agenda

The LAFCO processing fee of \$4,000 exceeds the reasonable cost for LAFCO to process the annexation and will bring a hardship on the landowner. It is requested that a more reasonable fee be imposed for this annexation. Thank you.

Sincerely,



BOB BRAITMAN

cc: John Orr, Esq., ODD No. 2
Frank Naumann, property owner

REC'D

APR 01 2002

LAFCO